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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 19 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's Rules  
Regarding Multiple Address Systems

To: The Commission

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WT Docket No. 97-81

REPLY COMMENTS OF GTECH CORPORATION

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October 19, 1999

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## SUMMARY

In these reply comments, GTECH maintains its support for the preservation of the 928/952/956 MHz bands exclusively for private, internal use, and urges exemption of these bands from competitive bidding. This support, however, is conditioned on whether the Commission, consistent with Congressional intent, broadly defines “public safety radio services” to include the types of services offered by entities such as GTECH and other MAS licensees who utilize private, internal communications systems to provide such services to state governments and other public safety providers. As a preliminary matter, GTECH agrees with those commenters who stress that the Balanced Budget Act of 1997 requires the Commission in assigning licenses to first make every reasonable effort to avoid mutual exclusivity. This requirement, combined with the fact that the current frequency assignment scheme in the 928/952/956 MHz bands virtually precludes the possibility of mutual exclusivity, leads to the conclusion that these bands should remain exempt from auctioning except in those rare instances when mutual exclusivity arises.

In the event that the Commission nevertheless decides to open the 928/952/956 MHz bands to competitive bidding, GTECH continues to urge the Commission to ensure that existing MAS stations remain grandfathered indefinitely regardless of any eligibility restrictions that would otherwise preclude incumbent licensees from applying for additional MAS licenses in the bands. Moreover, in order to ensure that private users of the bands are not effectively precluded from participation in such an auction, the Commission should afford bidding credits to applicants proposing to use the spectrum for private, internal purposes, regardless of whether the applicants satisfy the Commission’s definition of small or very small business. Finally, GTECH strongly supports the unanimous view expressed by other commenters that the Commission should lift or otherwise modify the MAS application freeze currently in effect.

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GTECH Corporation ("GTECH"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby respectfully submits its reply comments in response to the above-captioned Further Notice of Proposed Rulemaking and Order ("*Further Notice*").<sup>1</sup>

**I. STATEMENT OF INTEREST**

GTECH is the world's leader in computerized systems and services developed for government-authorized lotteries. This expertise is also widely applicable to other government services requiring secure, high-volume data transactions, such as electronic benefits processing, that provide state governments with an efficient, secure, and effective means by which to deliver critical health and safety-related benefits to their citizens. GTECH operates over 79 lotteries in 32 countries, including most of the state lotteries in the United States. In the United States, revenues generated by these lottery sales contribute billions of dollars annually to state

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<sup>1</sup> *In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, Further Notice of Proposed Rulemaking and Order, FCC 99-101 (rel. July 1, 1999) ("*Further Notice*").

government projects and programs promoting a wide variety of important societal benefits including health services, public safety, education, and economic development.

GTECH's private, internal communications networks are vital to the efficient and secure operation of a state's lottery and the ability of the state to maximize revenues and deliver important public services for the benefit of its citizens. As a critical part of its telecommunications infrastructure in the United States, GTECH relies on multiple address systems ("MAS") systems to transmit data from lottery and other point-of-sale terminals to its data centers in order to process millions of lottery and other transactions every day. Currently, GTECH is the licensee of over 300 MAS systems in over 14 states across the United States. GTECH, therefore, is keenly interested in the outcome of this proceeding.

## **II. BACKGROUND**

On July 1, 1999, the Commission issued the *Further Notice* in response to the Congressional directives in the Balanced Budget Act of 1997,<sup>2</sup> which amended Section 309(j) of the Communications Act and modified the parameters for determining whether the Commission is authorized to use auctions to allocate MAS spectrum. The Commission's objective in this proceeding is to supplement the record received in response to the Notice of Proposed Rulemaking ("*NPRM*")<sup>3</sup> in this docket. Specifically, the Commission seeks comment on the effect of the amendment to Section 309(j) on the proposals set forth in the *NPRM*.

GTECH has been an active participant in this docket and other licensing proceedings concerning the MAS band. GTECH filed comments and reply comment in response to the

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<sup>2</sup> Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

<sup>3</sup> See *In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, Notice of Proposed Rule Making, 12 FCC Rcd 7973 (1997) ("*NPRM*").

*NPRM* in this docket.<sup>4</sup> In those comments, GTECH expressed strong support for the Commission's proposal to allocate the 928/952/956 MHz bands exclusively for the internal communications needs of private users. GTECH also supported the Commission's proposal to continue site-by-site licensing in the 928/952/956 MHz bands. Further, GTECH agreed with other commenters that the use of MAS bands for mobile operations will have disastrous consequences for existing and future MAS usage.

More recently, GTECH filed comments in support of the separate petitions for relief from the MAS application freeze filed by the CII Petitioners, CellNet Data Systems, and Itron, Inc., to the extent that the relief sought by the petitioners from the application freeze was based on the hardship the freeze places on incumbent licensees and users of the band.<sup>5</sup> In those comments, GTECH suggested that the Commission could easily modify the scope of the freeze to provide the requested relief and, at the same time, achieve the purpose of the freeze without eliminating the ability of incumbent licensees to continue their operations in a manner consistent with the public interest.

### **III. DISCUSSION**

In these reply comments, GTECH maintains its support for the preservation of the 928/952/956 MHz bands exclusively for private, internal use, and urges exemption of these

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<sup>4</sup> See GTECH Corporation Comments (filed April 22, 1997) and Reply Comments (filed May 16, 1997) in WT Docket No. 97-81.

<sup>5</sup> See GTECH Comments (filed Oct. 7, 1999) in DA 99-1964 (*In the Matter of United Telecom Council, the American Petroleum Institute and the Association of American Railroads* ("CII Petitioners")) Emergency Request for Limited Exception to the Application Freeze in the 928/952/956 MHz Multiple Address Systems Bands), DA 99-1965 (*In the Matter of CellNet Data Systems, Inc. Request for Limited Exception to the Application Freeze for the 928/952 MHz Multiple Address Systems Bands*), and DA 99-1966 (*In the Matter of Itron, Inc. Request for Emergency Relief from the Multiple Address Systems Application Freeze in the 928/952/956 MHz Multiple Address Systems Bands*).

bands from competitive bidding, *provided* that the Commission, consistent with Congressional intent, broadly defines “public safety radio services” to include the types of services offered by entities such as GTECH and other MAS licensees who utilize private, internal communications systems to provide such services to state governments and other public safety providers. As a preliminary matter, however, GTECH agrees with those commenters who remind the Commission that the Balanced Budget Act of 1997 requires the Commission in assigning licenses to first make every reasonable effort to avoid mutual exclusivity. This requirement, combined with the fact that the current frequency assignment scheme in the band virtually precludes the possibility of mutual exclusivity, leads to the conclusion that the band should remain exempt from auctioning except in those rare instances when mutual exclusivity arises.

In the event that the Commission nevertheless decides to open the 928/952/956 MHz band to competitive bidding, GTECH continues to urge the Commission to ensure that existing MAS stations remain grandfathered indefinitely regardless of any eligibility restrictions that would otherwise preclude incumbent licensees from applying for additional MAS licenses in the band. Moreover, in order to ensure that private users of the band are not effectively precluded from participation in such an auction, the Commission should afford bidding credits to applicants proposing to use the spectrum for private, internal purposes, regardless of whether the applicant satisfies the Commission’s definition of small or very small business. Such measures would help to prevent the disruption and/or dislocation of incumbent, private MAS operations that might be subject to the Commission’s new rules. Finally, GTECH strongly supports the unanimous view expressed by other commenters that the Commission should lift or otherwise modify the MAS application freeze currently in effect. Each of these issues is addressed below.

**A. The Balanced Budget Act of 1997 Does Not Alter the Commission's Tentative Proposal in the NPRM to Designate the 928/952/956 MHz Bands Exclusively for Private, Internal Use and to Maintain the Existing Licensing Procedures.**

In the *NPRM*, the Commission did not propose to use competitive bidding to issue initial licenses for the 928/952/956 MHz bands because of its tentative conclusion that the majority of these channels are used by private systems to satisfy internal communications needs.<sup>6</sup>

Accordingly, the Commission proposed that the 928/952/956 MHz band would be designated exclusively for private, internal use. The Commission has reopened the record in this docket in order “to assess the impact of the passage of the Balanced Budget Act on [its] proposals and tentative conclusions.”<sup>7</sup> Specifically, the *Further Notice* asks whether or not the auction exemptions set forth in Section 309(j)(2) apply to MAS spectrum, and if so, whether “public radio safety services” represent the current dominant use of this band to such an extent that the Commission should allocate part, or all, of this band for such “public safety radio services.”<sup>8</sup>

GTECH concurs with the many commenters that express the view that the Commission's obligations under the Balanced Budget Act of 1997 do not alter its original proposal in the *NPRM* to designate the 928/952/956 MHz bands for private, internal use and to maintain the existing licensing procedures.<sup>9</sup> Specifically, GTECH agrees with the interpretation of those commenters who submit that the Balanced Budget Act's revision of the Commission's auction authority actually prohibits the Commission from auctioning MAS spectrum in the 928/952/956 MHz bands, given the Commission's duty to avoid mutual exclusivity. As these commenters

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<sup>6</sup> See generally *NPRM*, *supra*, at note 3.

<sup>7</sup> *Further Notice*, at ¶ 15.

<sup>8</sup> *Id.* at ¶ 20.

<sup>9</sup> See, e.g., Radscan, Inc. Comments at 3-5, CellNet Comments at 5.



explain, under the Balanced Budget Act of 1997, the obligation to auction licenses attaches only *after* the Commission satisfies the obligations set forth in paragraph (6)(E) of that Act.<sup>10</sup> In particular, the Balanced Budget Act of 1997 amended the Commission's auction authority to state as follows: "If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit," then the Commission must auction the licenses unless they fall within the exemptions set forth in section 309 (j)(2), which includes the exemption for "public safety radio services."<sup>11</sup> Paragraph (6)(E), in turn, requires the Commission to use "engineering solutions, negotiation" and other means to avoid mutually exclusive applications.<sup>12</sup> Accordingly, before the Commission turns to auctions in the 928/952/956 Bands, it must have attempted but failed to avoid mutual exclusivity.

However, commenters in this proceeding have demonstrated that the existing licensing procedures for these bands, which provide for prior coordination with existing licensees, the acceptance of applications on a first-come, first-served basis, and site-by-site licensing,<sup>13</sup> effectively eliminate any possibility of instances of mutual exclusivity.<sup>14</sup> This view, in fact, is supported by the Commission's own recognition that "the incidents of mutual exclusivity would be rare because the site-based applications would be frequency coordinated prior to their filing with the Commission."<sup>15</sup> Thus, mutually exclusive applications are not likely to be filed, and

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<sup>10</sup> See, e.g., CellNet Comments at 9; Radscan Comments at 3-5.

<sup>11</sup> 47 U.S.C. § 309(j)(1).

<sup>12</sup> 47 U.S.C. § 309(j)(6)(E).

<sup>13</sup> 47 C.F.R. § 101.103(d).

<sup>14</sup> See, e.g., CellNet Comments at 10; Radscan Comments at 4-5; Association of American Railroad Comments at 3.

<sup>15</sup> *Further Notice*, at ¶ 24.

there is therefore no basis for the Commission to consider auctions as a licensing mechanism for these frequencies or to change the current licensing procedures for the bands.<sup>16</sup>

**B. If the Commission Restricts the 928/952/956 MHz Bands to “Public Safety Radio Services,” Adoption of a Broad Definition of That Term Can Assure the Continued Availability of Spectrum for Private, Internal Operations, Such as Those Conducted by GTECH and Other Similarly-Situated Licensees, Consistent With the Public Interest.**

In the event that the Commission decides to limit eligibility in part or all of the 928/952/956 MHz bands to “Public Safety Radio Services,” as that term is defined in the Balanced Budget Act of 1997, GTECH, consistent with the comments of other parties in this proceeding, urges the Commission to recognize that Congress intended the statutory exemption to be broadly construed, and that by adopting an expansive definition, the Commission can limit the disruption caused as a result of such an action to a smaller number of incumbent licensees. As noted by commenters in this proceeding, in adopting the statutory exemption for Public Safety Radio Services, Congress utilized the word “including” twice in describing the types of entities and services that would fall under the definition.<sup>17</sup> Such terminology strongly suggests that Congress did not intend to exclude other types of entities or services.

As noted above, the services offered by GTECH to state governments are used by those governments to deliver, among other things, critical health and safety-related benefits to their citizens. For example, GTECH’s contract with the state of Texas, in addition to covering the provision of lottery services, includes the delivery of electronic benefits such as low income support and food stamp programs. Moreover, the funds generated through GTECH’s delivery of

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<sup>16</sup> In those rare cases where mutually exclusive applications are filed, the Commission could require licensees to share the channels under privately negotiated agreements, as suggested in paragraph 24 of the *Further Notice* or as proposed in the comments of Comsearch at 3-5 or the comments of Microwave Telecommunications, Inc. at 2.

<sup>17</sup> See, e.g., Radscan Comments at 8-9.

lottery services to the states are used by the state governments for other projects and programs promoting a wide variety of important societal benefits including health services, public safety, education, and economic development. For many states, lottery revenues are critical to enabling the state to provide to their citizens basic services, including those protecting the safety of life, health and property.

Under section 309(j)(2)(A), public safety radio services include “private internal radio services used by State and local governments and non-government entities . . . that – (i) are used to protect the safety of life, health or property; and (ii) are not made commercially available to the public.”<sup>18</sup> GTECH submits that its operations fit within these criteria. First, GTECH’s services have already been determined by the Wireless Telecommunications Bureau as recently as last year not to constitute the provision of subscriber-based services inasmuch as the communications transmitted over its MAS frequencies are not the services for which GTECH receives compensation.<sup>19</sup> Thus, GTECH’s network constitutes a private internal radio service within the meaning of the statute. Second, GTECH’s services clearly are used by state governments. Third, to the extent that GTECH’s private, internal communications networks are vital to the efficient and secure operation of a state’s lottery and the ability of the state to maximize revenues and deliver important public safety services for the benefit of its citizens, the services are used by the state to protect the safety of life, health and property. Finally, the services are not made commercially available to the public. Thus, GTECH submits that its operations meet all of the elements of § 309(j)(2)(A), and that it therefore meets the statutory criteria for an exemption.

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<sup>18</sup> 47 U.S.C. § 309(j)(2)(A).

<sup>19</sup> *See In the Matter of GTECH Corp., et al.*, Memorandum Opinion and Order, DA 98-0163, 13 FCC Rcd 4290 (WTB rel. March 6, 1998) (“*GTECH Order*”).

**C. If the Commission Elects to Modify the Current Licensing Procedures in the 928/952/956 MHz Bands, And If GTECH and Other Similarly-Situated Entities Do Not Qualify For Exemption Under Such Procedures, All Incumbent Licensees Should Be Grandfathered, All Unassigned Frequencies in the Bands Should Be Set Aside For Licensing By Competitive Bidding, And Eligibility for Such Frequencies Should Be Restricted To Private Internal Users.**

As noted above, GTECH submits that maintenance of the current licensing procedures in the 928/952/956 MHz bands is consistent with, and indeed demanded by, the Balanced Budget Act, and that GTECH is eligible in its own right as a public safety radio service entity. Should the Commission nevertheless decide to change the licensing procedures and restrict eligibility for unassigned frequencies in the bands to public safety radio service entities in such a manner as to exclude GTECH and other similarly-situated entities, the Commission must grandfather incumbent licensees to allow them to continue their operations. GTECH believes, as other commenters do, that grandfathering existing systems is essential to preventing the disruption and/or dislocation of MAS operations that will be subject to the Commission's new rules.<sup>20</sup>

Moreover, in the event the Commission changes the existing licensing procedures and narrowly defines public safety radio service to exclude entities such as GTECH, the Commission must set aside sufficient spectrum for incumbent licensees to expand their existing operations. GTECH submits that this could be accomplished through competitive bidding for all unassigned frequencies in the 928/952/956 MHz bands, where eligibility in the auctions for such frequencies is restricted to private internal users. By doing so, the Commission would be affording a reasonable opportunity for private users to bid among themselves to obtain much needed

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United Telecom Council Comments at 11. GTECH, however, disagrees with the proposal UTC and The American Petroleum Institute to use February 19, 1997 as the effective date for purposes of grandfathering the licenses of incumbent users. GTECH submits that, at a minimum, the Commission should grandfather all licenses granted as of July 1, 1999, the effective date of the last application freeze.

frequencies without having to bid against entities who propose to provide commercial services and who have an entirely different valuation model based on those services. In the alternative, the Commission should afford bidding credits to applicants proposing to use the spectrum for private, internal purposes, regardless of whether the applicants satisfy the Commission's definition of small or very small business. This would help level the playing field between subscriber-based service providers and private internal users.

Further, in order to assist private users in satisfying their well-documented need for additional private MAS spectrum, GTECH submits that any auction rules adopted for MAS spectrum should make provisions such as bidding credits and payment terms available to private user applicants. Again, such measures would help offset the inherent disadvantage that private users would have when bidding against entities that can pay for their licenses through subscriber-based revenues. If, contrary to GTECH's original recommendation, the Commission nevertheless adopts geographic licensing in the 928/952/956 MHz bands, it is imperative that the Commission permit incumbent licensees in that band to continue operating under their current authorizations and require any new geographic area licensees to protect the incumbents.

**D. Commenters Are Unanimous in Urging the Commission to Lift or Modify the MAS Application Freeze.**

GTECH concurs with other commenters urging the Commission to either lift or at least modify the MAS application freeze<sup>21</sup> The *Further Notice* effectively expands an existing application freeze in the 928/952/956 MHz bands that the Commission implemented on February

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<sup>21</sup> See, e.g., Northern States Power Company Comments at 19-20; Pacific Gas and Electric Comments at 1-3; Blue Ridge Electric Cooperative Comments at 1-2; Public Service Company of Colorado Comments at 1-2; United Telecom Council Comments at 12; Association of American Railroads Comments at 4-5; Itron, Inc. Comments at 2; Microwave Telecommunications, Inc. Comments at 1.

19, 1997, and that applied to providers of subscriber-based services. The new freeze applies to all applicants, including public safety and private, internal users.<sup>22</sup> In particular, effective July 1, 1999, the Commission suspended “until further notice” the acceptance of all MAS applications for new licenses, amendments, or modifications for the 928/952/956 MHz bands, regardless of the type of service proposed by the applicant.<sup>23</sup> The Commission made this determination based on the uncertainty regarding whether it will ultimately employ geographic area licensing and auctions for these bands. Another concern is that the Commission’s database needs to be fixed as of a certain point in time in order for potential bidders to assess the existing incumbent landscape and plan for auction. The Commission, however, stated that it would continue to accept and process all MAS applications for minor modifications or for license assignment or transfer of control under its existing procedures.

As a practical matter, virtually the entire 932/952/956 MHz band is encumbered by existing licensees. If the Commission were to apply the freeze only to new, non-incumbent applicants, there would be little likelihood that the Commission would receive a flood of applications. This would permit incumbent licensees to make necessary modifications and reasonable expansions of their systems consistent with the purposes of the freeze and the public interest. If the Commission nevertheless remained concerned that modifications and reasonable expansions would undermine its need to preserve the status quo in advance of the auction, it could provide a limited time period during which incumbent licensees could file applications to

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<sup>22</sup> As noted, the Commission instituted the original application freeze on February 19, 1997. The Commission initially returned several of GTECH’s applications filed on that date as unacceptable for filing because they were allegedly for subscriber-based services. On reconsideration, however, the Commission concluded that GTECH does not provide subscriber-based services and, therefore, reinstated its applications. *See GTECH Order, supra, at note 20.*

<sup>23</sup> *Further Notice*, at ¶ 28.

relocate or otherwise modify their stations, thereby providing the licensing division ample time prior to the auction to finalize their MAS database.

GTECH further points out that although the Commission specifically states with respect to the application freeze that “this action is consistent with the approach we have taken in all other existing services where we have proposed to adopt geographic licensing and auction rules,”<sup>24</sup> in fact, in at least three instances, the Commission has afforded incumbent licensees certain flexibility to expand their systems or modify their existing licenses in advance of an auction of geographic area licenses. The Commission, for example, granted incumbent paging licensees significant relief from a freeze imposed in advance of conversion from site-by-site licensing to geographic licensing, recognizing the need of these licensees to maintain flexibility in meeting the needs of their customers and the significant costs that an across-the-board freeze places on incumbent licensees with operating systems.<sup>25</sup>

Similarly, in the 800 MHz Specialized Mobile Radio service, the Wireless Telecommunications Bureau granted relief from an application freeze for incumbent licensees pursuant to the Commission’s *CMRS Third Report and Order*, which established a waiver policy under which licensees were allowed to make system modifications provided that such modifications did not expand the licensee’s coverage into “new spectrum or previously uncovered geographical areas.”<sup>26</sup> The Commission utilized a similar approach in the 220-222 MHz band, where licensees were subject to an application freeze prior to an auction. In the

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<sup>24</sup> *Id.*

<sup>25</sup> See *In the Matter of Revisions of Part 22 and Part 90 of the Commission’s Rules to Facilitate the Development of Paging Systems*, WT Docket No. 96-18, First Report and Order, 11 FCC Rcd 16570, 16581 (1996).

<sup>26</sup> *In the Matter of Requests for Waiver of the 800 MHz Specialized Mobile Radio Application Freeze*, Order, DA 96-1726, 11 FCC Rcd 13850 (WTB rel. Oct. 23, 1996).

*Second Report and Order* in PR Docket No. 89-552 and GN Docket No. 93-252, the Commission adopted a procedure that enabled 220 MHz licensees to modify their licenses to relocate their authorized base stations certain distances from their originally authorized locations. The Commission indicated that the modification procedure would enable 220 MHz licensees to provide service in the geographic area where they were authorized, “while accommodating their need to relocate their base stations for technical or other legitimate reasons.”<sup>27</sup> GTECH submits that in order to be consistent, therefore, the Commission must afford incumbent MAS licensees similar flexibility.

Should the Commission choose not to provide blanket relief from the application freeze to all incumbent MAS licensees in the 928/952/956 MHz band, GTECH urges the Commission, at a minimum, to exempt certain modifications from the application freeze that do not undermine the underlying purpose of the freeze. For example, if an incumbent licensee has a need to relocate its master station a short distance from its existing location (because, for example, it is unable to renew its existing site lease), the licensee should be permitted to do so even though such a move would be considered a “major” modification under the rules, provided that the licensee otherwise complies with the required mileage separations and short-spacing requirements set forth in the rules. GTECH submits that such relocations are often necessary in the real-world operations of a stations and should not be precluded by the application freeze. Moreover, as noted above, the Commission has granted flexibility of this nature in the paging, 800 MHz and 220 MHz services. Accordingly, GTECH urges the Commission to lift or modify the freeze, consistent with GTECH’s recommendations herein.

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<sup>27</sup> *In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552 and GN

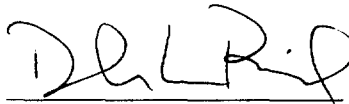


#### IV. CONCLUSION

GTECH urges the Commission to take action in this proceeding consistent with the views expressed herein and in GTECH's comments and reply comments in response to the *NPRM*.

Respectfully submitted,

**GTECH Corporation**

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